III. The Ameritech Petition is Not Authorized By Section 706 of the 1996 Act.

The Petition asks the Commission to take two broad actions to encourage Ameritech to provide "high-speed data services:"

> (1) eliminate Ameritech's Section 271 and 272 obligations, and Ameritech would offer such services pursuant to a separate subsidiary as promulgated in the Competitive Carrier Proceeding; and
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> (2) the elimination of Ameritech's Section 251(c) resale and unbundling requirements. Ameritech Petition at 3-4.

Ameritech states that Section 706 authorizes and, indeed, "requires the Commission" to exercise regulatory forbearance authority as described in the Petition. Petition at 33.

CIX believes that the Ameritech Petition advocates for bad policy decisionmaking. Section 706 does not in any way suggest that the Commission can or should act in the manner so vaguely outlined by Ameritech. As Chairman Kennard recently stated, "[t]he best way to ensure more bandwidth is to encourage local competition."[34] Ameritech, however, asks the Commission to directly contravene the obligations of Section 251(c) of Act; enumerated Section 271 competitive checklist requirements; the Section 272 structural separation obligations. Nothing in the statutory language of Section 706 even suggests such an unbridled end-run around key competitive safeguards of the 1996 Act.

Instead, Section 706 authorizes the Commission to encourage advanced telecommunications for "reasonable" deployment through regulatory measures that are "consistent with the public interest" and that "promote competition in the local telecommunications market." Ameritech's request fails to meet any of these statutory standards because it would: exclude ISPs and CLECs from unbundled access to xDSL network elements;

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34 FCC News, "Chairman William E. Kennard Receives Alliance for Public Technology Pioneer Award; Outlines Guidelines for Bandwidth" (Feb. 27, 1998).

eliminate resale of local telecommunications services while Ameritech continues to hold a monopoly over local access; and retreat from competitive safeguards in place to prevent the RBOCs from discrimination or cross-subsidization. In short, Ameritech asks the Commission to accept an untenable policy trade of local telecommunications competition in return for a vague promise for advanced services.

A. Ameritech's Requests For InterLATA Authority, Wholesale Resale, Unbundling Obligations Are Not Authorized By the 1996 Act

CIX finds that the Commission lacks authority to entertain Ameritech's request to forbear from Sections 271, 251(c), and 272 of the Act.

1. Ameritech Fails To Demonstrate That The Commission Has Statutory Authority to Forbear From Sections 271 and 251(c) of the Act

The 1996 Act specifies the manner by which Ameritech may seek authority to enter the in-region interLATA services market. 47 U.S.C. § 271(c). Section 271 sets out a detailed and specific procedure by which the Commission must evaluate a request for authority to enter either the interLATA telecommunications or information service markets, and obligates the Commission to monitor an RBOC's continuing compliance with the competitive checklist requirements. Id. at § 271(d). Thus, Congress has made its position quite clear: compliance with the competitive mandates of the 1996 Act and Section 271 is a necessary prerequisite for Ameritech to enter the interLATA Internet market.[35] Congress further expressed this mandate by specifically foreclosing any Commission action that veers from the express terms of Section 271: "LIMITATION ON COMMISSION -- The Commission may not, by rule *or otherwise*, limit or extend the terms used in the competitive checklist . . . ." Id. at § 271(d)(4) (emphasis

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35 CIX notes that Ameritech's proposed offering could not in any manner be deemed an "incidental interLATA service." Section 271 permits interLATA Internet services only to serve "elementary and secondary schools as defined in section 254(h)(5)." Id. at § 272(g)(2); § 272(h) (incidental interLATA service provisions shall be narrowly construed).

added). See also, Non-Accounting Safeguards Order, 11 FCC Rcd. at 21967 ("If a BOC's provision of an Internet or Internet access service . . . incorporates a bundled in-region, interLATA transmission component provided by the BOC over its own facilities or through resale, that service may only be provided through a Section 272 affiliate, after the BOC has received in-region interLATA authority under Section 271.").

Ameritech's Section 251(c) resale and unbundling obligations are also unequivocal: it has a "duty to provide . . . nondiscriminatory access to network elements on an unbundled basis at any technically feasible point . . . .", and a duty "to offer at wholesale rates any telecommunications service that the carrier provides at retail to subscribers." 47 U.S.C. § 251(c)(3) & (4)(A). Moreover, Congress defined "network element" quite broadly as "a facility or equipment used in the provision of a telecommunications service." Id. at § 153(29). Thus, the xDSL equipment and functionalities that are part of Ameritech's network are subject to Section 251(c) unbundling, and its xDSL resale service is subject to the statutory wholesale resale obligation.

Ameritech's request for the Commission to forebear from Section 271 and 251(c) is beyond the Commission's forbearance authority, which is expressly limited: "the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented." 47 U.S.C. § 160(d). Here again, Congress has spoken in plain terms to require Ameritech to open its local network up to competition, to fully unbundle and resell pursuant to Section 251(c), and to meet the competitive checklist of Section 271 *prior to entering* the interLATA markets.

Ameritech asserts, however, that the general language of Section 706 for the Commission to "utiliz[e] . . . regulatory forbearance," provides a statutory basis to forbear from the requirements of Section 271. Ameritech Petition at 3, n.61. For several reasons, CIX strongly disagrees with this statutory interpretation. The language "utiliz[e] . . . regulatory forbearance" only provides the Commission with *general* direction on how to promote advanced services, it

does not suggest that the Commission may override the *specific* directive of Section 10 that forbids it to forbear from Sections 271 and 251(c). The language of Section 706 merely exemplifies for the Commission *to utilize* its forbearance authority in order to promote advanced telecommunications deployment. Thus, Congress has articulated a policy in favor of deployment of "advanced telecommunications services," which would factor into the Section 10(a)(3) "public interest" determination in the context of a Section 10 forbearance proceeding. The source of the Commission's forbearance authority to address this Petition, however, is still Section 10 of the Communications Act, which expressly prohibits the Commission from forbearance in this case. 47 U.S.C. § 160(d).

Moreover, Ameritech's interpretation of Section 10 (Petition at n.61) is inconsistent with the plain statutory language. Congress carefully crafted Section 10 to recognize only one other independent source of statutory forbearance authority, as found in Section 332(c)(1)(A) of the Act. Id. at § 160(a) ("*Notwithstanding section 332(c)(1)(A) of this Act*, the Commission shall forebear from applying any regulation or any provision of this Act" that the Commission finds consistent with the standards of Section 10). Congress did not recognize Section 706 as an independent source of forbearance authority. Surely, if it had been Congress' intention to create an independent basis for regulatory forbearance under Section 706, then Section 10(a) would have been crafted to expressly reference both Section 332(c)(1)(A) and Section 706. Rather, read in conjunction with Section 10, the Section 706 statutory language ("utilizing . . . regulatory forbearance") merely directs the Commission to generally exercise its Section 10 forbearance authority, among other permissible deregulatory tools, to promote advanced telecommunications.

Ameritech's forbearance argument is also incongruous with at least three other aspects of the 1996 Act. First, as cited above, Section 271(d)(4) states that the "Commission may not, by rule *or otherwise*, limit or extend the terms used in the competitive checklist . . . ." Id. at § 271(d)(4) (emphasis added). It is hard to fathom that Congress would have directed the Commission to strictly apply every element of Section 271, and yet, as Ameritech contends,

Congress would permit the Commission to sweep away *all* Section 271 requirements through a Section 706 proceeding. Second, Ameritech's view of Section 706 regulatory forbearance authority[36] would vest in the Commission almost unfettered discretion to eliminate or fundamentally change statutory requirements, which is at odds with Section 10 and with established precedent on the Commission's limited preemption authority. See, MCI v. AT&T, 114 S. Ct. 2223 (1994).

Finally, and equally strained, is Ameritech's argument that Section 271 forbearance can be achieved through the Commission's authority under Section 3(25)(B) of the Act to "modify" geographic LATA boundaries. Petition at 3, 12-13. Ameritech seeks a whole-scale *elimination* of all LATA restrictions of its data services that would otherwise be imposed by Section 271, and so the Commission's authority under Section 3(25) to approve a *modification* of specific LATA boundaries is inapposite in this proceeding.[37] See also, MCI v. AT&T, 114 S. Ct. at 2229 (use of the word "modify" in Communications Act means to "change moderately or in minor fashion"). While Ameritech contends that LATAs should not apply to their Internet services because "a LATA is meaningless in the packet-switched world" (Petition at 12), this argument fails to recognize that LATAs and the LATA restrictions of Section 271 do properly apply in this proceeding because Ameritech will employ its own monopoly local network as part of the

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36 According to Ameritech, Section 706 forbearance is required if one simple showing is made: the request would "encourage the deployment of advanced telecommunications capability." Petition at n.61.

37 Indeed, Ameritech's approach to LATA modifications would turn the Commission's precedent on its head. See, e.g., In the Matter of U.S. West for Limited Modification of LATA Boundaries, Memorandum Opinion and Order, File No. NSD-L-97-31, DA 98-433, ¶¶ 6-7 (CCB rel. March 4, 1998) (among other requirements, the Section 3(25)(B) LATA modification process requires prior state approval and a showing that the change of LATA boundaries would not undermine Section 271 objectives, "would not have a significant anticompetitive effect on the interexchange marketplace or on [Bell Company's] . . . incentive to open its local exchange and exchange access markets to competition").

Internet service. Thus, a LATA "modification" as Ameritech proposes would substantially frustrate the goals of Section 271. Non-Accounting Safeguards Order, 11 FCC Rcd. at 21967 (BOC interLATA Internet service must comply with both Sections 271 and 272.

2. Ameritech Fails To Demonstrate That The Commission Has Authority to Forbear from Section 272

One month before Ameritech filed its Petition, the Common Carrier Bureau made clear that the Commission's Section 272 forbearance authority is limited by Section 10(d) of the Act. The Bureau held: "[P]rior to their full implementation we lack authority to forbear from application of the requirements of Section 272 to any service for which the BOC must obtain prior authorization under Section 271(d)(3)," and, " that section 10(d), read in conjunction with section 271(d)(3)(B), precludes our forbearance for a designated period from section 272 requirements with regard to any service for which a BOC must obtain prior authorization pursuant to section 271(d)(3)."[38] Thus, until Ameritech obtains Section 271 approval to offer interLATA telecommunications and information services, the Commission has already held that it has no authority to forebear.

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38 "Bell Operating Companies' Petitions for Forbearance from the Application of Section 272," Memorandum Opinion and Order, CC Dkt. No. 96-149, DA 98-220, ¶¶ 22, 23 (CCB, rel. Feb. 6, 1998). Unlike Ameritech's request in this proceeding, the Bureau reasoned that it had authority to forbear from Section 272 because the E911 and reverse directory services in question were Section 271(f) "previously authorized" services. Id. at ¶ 25.

B. Ameritech's Competitive Carrier Separate Subsidiary is Not Authorized by the 1996 Act.

Ameritech generally characterizes its proposal for high-speed data communications as largely a venture to build a new data network,[39] and it argues that this new network should not be saddled with regulations designed for the telephony, such as LATA restrictions, UNE unbundling, wholesale resale obligations, etc. In fact, however, Ameritech's network is *intrinsically married to* its existing monopoly over local access lines and central office facilities that aggregate both voice and data traffic on those lines (see, below at III (B)(1)).[40] The statutory requirements (Sections 251(c), 271, 272) apply with equal force under such circumstances. Ameritech's efforts to convince the Commission to accept something less than the obligations of the Act -- either by accepting from Ameritech a Competitive Carrier subsidiary rather than a Section 272 subsidiary or by accepting a less-than-separate Section 251(h) affiliate -- should be ignored. The public interest is not served by compromising down from the RBOCs' obligations under the Act.

1. Ameritech's Proposed xDSL Service Is A Local Telecommunications Service Using ILEC Access Lines Bundled With Internet Access and with InterLATA Internet Capacity.

Ameritech acknowledges that its proposed service is grounded in its local network: "[t]hrough xDSL technology, customers can use existing copper loops to provide high-speed data communications, and they can do so without interfering with the carriage of voice."[41] It also

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39 Petition at 9.

40 Ameritech appears to ask the Commission to deregulate the following end-to-end service package: (a) local xDSL access service, (b) Ameritech Internet Service, and (c) long-distance interLATA data capacity.

41 "xDSL" connotes a group of related telecommunications services, including "Asymmetric Digital Subscriber Line" ("ADSL") offers download speeds of up to 9 Mbps and upload speeds

(Footnote continued to next page)

appears from the Petition that Ameritech intends to deploy ADSL, which is a modem technology that places digital bits in the inaudible frequency of the telephone line. The line is split at the home, carrying voice to the customer's telephone or fax machine and data to the computer via an ADSL Terminal Unit-Remote. In order to deliver such powerful capabilities, modem and computer facilities are installed both at the customer premises and integrated with existing lines at the ILEC's central office. At the customer end, the ADSL modem splits the voice transmission channels apart from the upload/download data channels. In this way, a customer may lease a single ILEC line to maintain continual high-speed data access at the same time the customer's telephone is in use. The voice telephony is contained within the lower frequencies (e.g., 0 to 4 kHz) of the copper wire, while the upper frequencies (4 kHz to 2 MHz) are used for the data download/upload channels. Significantly, the data user does not "dial-in" or otherwise employ the PSTN in order to reach the Internet; instead, the customer perceives ADSL as an "always on" connection to the Internet.

At the ILEC central office, the ADSL modem "splits" the voice from the data communications, and the voice traffic is routed to the ILEC's PSTN switch. However, data communications from and to the customer does not enter the ILECs' central office switch;[42] it is separately routed to a digital subscriber line access modem ("DSLAM"). The DSLAM aggregates Internet traffic onto higher-capacity ATM or fiber facilities, which are ultimately connected to the Internet.[43] That final interLATA portion is logically and technically distinct

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(Footnote continued from previous page)
of 1.5 Mbps. Other variants of xDSL services include High-data-rate Digital Subscriber Line ("HDSL") (promising an upload and download speed of up to 2 Mbps) and Very-high-data-rate Digital Subscriber Line ("VDSL") (promising a download speed up to 52.8 Mbps).

42 In this way, ADSL could alleviate alleged PSTN switch congestion issues.

43 See P. Robinson, "DSL v. The World," www.PCComputing.com at 263 (Jan. 1998).

from the xDSL access service portion; other providers, including independent ISPs, can and do offer Internet access that is separate from the local transport to and from the ISP.[44]

If achieved, the promise of ADSL for the public is largely measured in terms of much greater bandwidth to homes and businesses through the existing ubiquitous network of telephone access lines.[45] ADSL promises to deliver over the same wire to the home (a) the POTS voice service, and (b) download speeds that are multiples of today's ISDN rates and many times faster than even 56.6 kbps modems. ADSL itself can provide theoretical speeds of 8 Mbps (download) and 1.5 Mbps (upload). Ameritech claims that its current ADSL trial service "sends data at rates up to 1.5 Mbps from the Internet to your home . . . 52 times faster than a conventional 28.8 Kbps modem."[46] The recently announced "Universal ADSL Working Group" has proposed a set of technical standards to the International Telecommunications Union that would promise a more simplified deployment arrangement, with a service of downstream speeds up to 1.5 Mbps and upstream speeds up to 256 Kbps.[47]

As best CIX can understand Ameritech's proposed offering, its xDSL service would be essentially a local telecommunications service[48] that could be used by consumers for both voice

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44 In fact, Bell Atlantic's current ADSL trials in Northern Virginia allow customers to choose either Clarknet or CAIS as the ISP, in addition to Bell Atlantic Internet Services.

45 According to the ADSL Forum, the high penetration rate of the ILEC existing telephone network makes ADSL a much more attractive option for mass deployment of high bandwidth services to the home than CATV. ADSL Forum, "Growth of Copper Access Lines," at <http://adsl.com/copper_access_growth.html>.

46 "Using ADSL," at <http://www.bell-atl.com/adsl/using_main.htm>.

47 See "ADSL Forum Applauds Effort to Speed 'Plug and Play' ADSL," at <http:// adsl.com/ PressRoom/news1_98.html>.

48 As noted above, US West already filed it xDSL service tariffs in several in-region states.

(via the PSTN) and data communications (via connection to an ISP), and is similar to Ameritech's ISDN offerings or analog business and residential second line offerings. CIX notes that, under current FCC rules, when Ameritech chooses to bundle its information service and its xDSL service, the xDSL must be evaluated as a separate local telecommunications service offering. AT&T Frame Relay Declaratory Ruling, Memorandum Opinion and Order, 10 FCC Rcd. 13717, 13725 (1995) (Computer II requires a facilities-based carrier engaged in "enhanced" services to separate and tariff its "basic" services) (quoting, Computer II, 77 FCC 2d at 475)).

2. Ameritech's Separate Subsidiary Proposal Fails to Adequately Protect Local Competition, As Congress Intended By the 1996 Act.

As discussed above, CIX believes that the Commission lacks authority to entertain Ameritech's requests to adopt a less rigorous structurally separate subsidiary than called for under Section 272.

However, even if one assumes, *arguendo*, that Section 706 is an independent source of forbearance authority, the Commission's forbearance action would have to "promote competition in the local telecommunications market." 1996 Act, § 706(a). However, the separations, nondiscrimination, transactional, and auditing obligations of Section 272 are each designed to promote local telecommunications. As the Commission explained in the Non-Accounting Safeguards Order,[49] the Section 272 safeguards "are designed, in the absence of full competition in the local exchange marketplace, to prohibit anticompetitive discrimination and cost-shifting, while still giving consumers the benefit of competition." Because Ameritech maintains its market dominance over the very access lines that are a practical necessity for wireline xDSL service, it has every incentive to engage in exactly the sort of activity that Section 272 is meant to proscribe. Given this, it is difficult to discern how forbearance of Ameritech's Section 272

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49 11 FCC Rcd. at 21911.

obligations, even in the form of a diminished separations regime, would promote local competition.

Ameritech proposes for the Commission to substitute the statutory safeguards of Section 272 for the more lenient separations obligations articulated in the Competitive Carrier proceeding for independent LEC entry into the long-distance market. The safeguards lost under such a proposal, however, would jeopardize the competitive local market, and would make it difficult to detect and enforce separations.[50] Essentially, while the Commission considered the application of the Competitive Carrier separations, the Non-Accounting Safeguards Order[51] did not adopt that model for Section 272. Again in the LEC Classification Order, the Commission explained that the BOCs are treated as nondominant carriers *only* when the terms of the Section 272 obligations are in place and enforced.[52] Ameritech (at 16) seeks to relitigate those rulemaking decisions by generally complaining that the Section 272 obligations are "inefficient, redundant," and too "stringent." These are complaints with the statute itself and are irrespective of the interLATA service offered; but, the Commission's forbearance authority is a not a license to "fix" legislation.

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50 For example, the sharing of employees, as well as operating and maintenance expertise, among the BOC and the separate affiliate would be very difficult to monitor and rules governing such activities would be hard to enforce. See Non-Accounting Safeguards Order, 11 FCC Rcd. at 21984 (permitting BOC to contract away operations, maintenance, and installation functions would create opportunities for cost-misallocation and create significant and burdensome regulatory involvement).

51 11 FCC Rcd. at 21977-21978.

52 "Regulatory Treatment of LEC Provision of Interexchange Services," Second Report and Order and Third Report and Order, CC Dkt. Nos. 96-149, 96-61, FCC 97-142, ¶¶ 85-92 (rel. April 18, 1997) (dominant carrier regulation applies unless the BOC complies with the mandates of the order, including the Section 272 separate affiliate obligations).

More broadly, CIX believes that the mandates of Section 272 of the Act should not be swept away just two years after enactment simply because the Bell Operating Companies' today allege that they can improve some interLATA services. Congress implemented a specific statutory scheme for a specified period with a public policy for opening up the local telecommunications marketplace, and the Commission should exercise extreme caution in second-guessing this Congressional decision.

Finally, Ameritech attempts to recast its argument around the Section 272 obligations by suggesting that an Ameritech Competitive Carrier separate subsidiary would not be a Section 251(h) "incumbent local exchange carrier," and so would avoid Section 251(c) resale and UNE obligations. Petition at 24-25. This argument neglects to consider the plain import of Section 272(a)(1): the subsidiary must be "*separate* from any operating company entity that is subject to the requirements of section 251(c)." 47 U.S.C. § 272(a)(1)(emphasis added). Because the Competitive Carrier separate subsidiary, by definition, does not meet the standards of section 272, it is not operating separately from the RBOC. The Non-Accounting Safeguards Order (paras. 312-316) is premised on this view, as it permits Section 272 affiliates to engage in local exchange competition, with section 251(c) rights, *because* that affiliate has met the separation standard of Section 272. The same view is expressed in the LEC Classification Order; the Commission stressed the importance of the Section 272 separations, not some lesser separation obligation, to protect the competitiveness of the market from the RBOC's potential for monopoly abuse. Finally, CIX notes that Ameritech would have its Competitive Carrier subsidiary hold the xDSL modem (in order to avoid unbundling obligations) which splits voice from data traffic. As such, that subsidiary would substantially engage in the coordinated offering of "telephone exchange service" with its BOC affiliate, and so would be considered a "comparable carrier" under Section 251(h)(2).

C. Ameritech's Request for Exemptions From Unbundling, Resale, and Separations Obligations Would Substantially Frustrate Local Telecommunications and Internet Service Competition.

Section 706 requires the Commission to take "reasonable" actions in furtherance of the "public interest," and "measures that promote competition in the local telecommunications market." 1996 Act, § 706(a). CIX fully supports that statutory policy. CIX is confident that innovative telecommunications services will emerge when the ILECs have opened their monopoly access networks, and interconnect on fair and reasonable terms, as required by the 1996 Act.

However, Ameritech's request to provide xDSL services without regard to their unbundling, separations, and resale obligations would be wholly unreasonable, would violate the public interest as embodied by a host of Congressional and Commission policies, and would be fundamentally contrary to the furtherance of local competition. In CIX's view, what Ameritech Petition seeks is to close all access to local data users for competing providers, while maintaining its monopoly position over local telecommunications. This effort is fundamentally contrary to the public interest.

1. Neither ISPs Nor CLECs Would Have Unbundled Access to the Underlying Local Telecommunications Data Network

Ameritech asks for the Commission to exempt its xDSL local telecommunications services from unbundling requirements. Petition at 3. However, 1996 Act makes perfectly plain that Ameritech and other incumbent LECs must unbundle and provide access "at any technically feasible point," and offer all of its local telecommunications services for competing providers. 47 U.S.C. § 251(c)(3)&(d)(2). Congress defined "network elements" broadly, and did not limit the ILEC's unbundling obligations to only those elements of its network used exclusively for voice traffic. Id. at § 152(29)("'network element' means a facility or equipment used i the provision of a telecommunications service"). Thus, Congress has unequivocally laid down

statutory law and a public policy for broad, open, and comprehensive access to the elements of the incumbent LECs' networks.

While its Petition is vague, Ameritech apparently asks to be exempt from its Open Network Architecture ("ONA") and Comparably Efficient Interconnection ("CEI") unbundling obligations. Thus, competing ISPs would be denied access to the underlying telecommunications services that would be enjoyed exclusively by Ameritech's ISP affiliate. It is beyond question that such a regulatory exemption would flatly contradict the Commission's decades-long precedent to open local telecommunications to preserve a vibrant information service market for the benefit of the American consumer.[53]

In both cases, unbundling serves a number of essential functions that are part of the federal policy framework to open up the local market. First, unbundling permits local telecommunications carriers to establish an early foothold in the marketplace, by allowing competitors to combine their own more limited facilities with the elements of the ILECs' ubiquitous network. In addition, unbundling ensures more competitive pricing of local retail services. If the ILEC attempts either to overcharge for a given retail service or, alternatively, to deploy inefficient elements in the provision of the service, then unbundling provides the competing provider with incentive to purchase all UNEs of a given service at cost (in the former case), or to purchase some UNEs and recombine them with more efficient elements (in the latter case). While Ameritech claims that unbundling of certain xDSL equipment is unnecessary

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53 See "Computer III Further Remand Proceedings," Further Notice of Proposed Rulemaking, CC Dkt. Nos. 95-20, 98-10, FCC 98-8, at ¶ 78 (rel. Jan. 30, 1998) ("ONA unbundling requirements serve both to safeguard against access discrimination and to promote competition and market efficiency in the information services industry.").

because it may be acquired by all providers, this argument is contrary to the essential role of UNE rights as a systemic check on ILEC pricing.[54]

CIX is particularly concerned with Ameritech's statement that Section 251(c) rights should not force it to unbundle "only the data bandwidth, or the voice bandwidth, of Ameritech's loop facilities." Petition at 23. Ameritech would seem to be indicating that, with its ADSL service, the line capacity used for either data or voice services would not be subject to open UNE competition. For example, if a subscriber initially purchases Ameritech's ADSL service (which would provide data and voice on a single line to the home), and then the subscriber decides to switch its data or voice provider, it would need to purchase a second line. However, if that same customer was offered voice communications via a UNE offered by a CLEC, Ameritech would obviously not charge the customer any second-line costs if the customer chose to migrate its voice and data service to Ameritech. The customer's second-line cost of switching from Ameritech to a competitor, which would be a direct consequence of Ameritech's UNE position on ADSL, is an obvious example of why Ameritech's unchecked monopoly would interfere with competition to provide both data and voice.

Similarly, ONA unbundling serves the public interest because it allows competing information service providers to recombine telecommunications elements for more efficient, or niche, services that the ILEC may be unwilling to furnish. As the Commission noted in the 1990 ONA Remand Order, ONA serves the public interest because it allows ISPs to make more efficient use of the LEC network:

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54 Local Competition Order, at ¶ 283 ("Requiring new entrants to duplicate unnecessarily even a part of the incumbent's network could generate delay and higher costs for new entrants, and thereby impede entry by competing local providers and delay competition, contrary to the goals of the 1996 Act.").

> A major goal of ONA is to increase opportunities for ESPs to use the BOCs' regulated networks in highly efficient ways, enabling them to expand their markets for their present services, and develop new offerings as well, all to the benefit of consumers . . . promotion of efficient use of the network is one of the primary goals of the Communications Act.[55]

Finally, an exemption from unbundling requirements *at this time* would be particularly pernicious. To date, Ameritech has failed to demonstrate that competing ISPs or CLECs would have any other local ADSL access options available to get to the end-user customer. See Part II(-), *infra*. Ameritech also claims that it will continue to unbundle and offer interconnection (Petition at 18); however, it cannot at this time demonstrate compliance with its UNE and other local competition obligations by meeting the Section 271 checklist. To grant Ameritech's Petition now, before it has opened its network for UNE competition, would be to trade local competition for a promise for innovation.

2. No True Competitive Market for the Provision of xDSL Would Emerge Without Resale

It is readily apparent from the statutory structure that Section 251(c)(4)(a) resale obligations complement the ILECs' unbundling obligation to ensure a more competitive local telecommunications market. Together, the two obligations permit providers to compete with the ILEC either by (a) recombining UNEs (which would likely entail interconnection and collocation) or (b) purchasing the ILECs' total retail service at cost, minus the ILECs' "avoided" costs. For the same reasons that the UNE obligation keeps consumer prices competitive, as discussed above, the wholesale resale obligation also serves the Congressional intent to encourage local competition.

Further, CIX believes that it is especially important for the Commission to keep the resale obligation intact for xDSL services. The resale obligation will ensure that xDSL is not a repeat

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55 In the Matter of Computer III Remand Proceedings, Report and Order, 5 FCC Rcd. 7719, 7720 (1990) ("ONA Remand Order"), aff'd, California v. FCC, 4 F.3d 1505 (9th Cir. 1993).

of the ILECs' pricing decisions that delayed the deployment of ISDN: with the resale obligation, the ILECs cannot effectively stall the deployment of this new technology through excessively high tariff pricing. In addition, CIX believes that xDSL services may pose technical issues that would make it more difficult for competing providers to arrange easy and effective interconnection arrangements with the ILEC. For example, CIX is aware that certain proposed xDSL arrangements would move the service further into the switch, making unbundled access more cumbersome. Ameritech alludes to such issues in its Petition (at 23), when it complains that, with UNE rights, "a competitor could arguably demand access to only the data bandwidth, or the voice bandwidth, of Ameritech's loop facilities . . . . [causing] crosstalk, interference, and other service problems." If such problems are borne out in the market, use of the resale obligation will be especially critical for competing providers.

Finally, CIX notes that many ILECs, including Ameritech, are active participants in the ADSL Forum, which is comprised of all the major hardware and software developers of xDSL. Ameritech and a select group of computer software and hardware giants are now engaged in the ongoing development of the technical and architectural characteristics of xDSL services. This position, combined with its purchasing power over switch and equipment manufacturers, provides the ILECs with ample business incentives to promote technical solutions favoring their own deployment, and hindering UNE access to xDSL by competing providers. Thus, the wholesale resale obligation will function as a check against such potential design and deployment activities that are inimical to local xDSL competition.

Conclusion

For the foregoing reasons, CIX believes that the Commission should dismiss the Ameritech Petition. The competitive provision of advanced telecommunications services, such as xDSL, cannot be achieved in the manner outlined by Ameritech. Instead, the grant of the Ameritech Petition would frustrate the ability of other telecommunications providers to bring

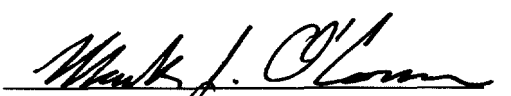
competition to Ameritech's in-region markets, and would significantly harm the ability of independent ISPs to continue to enrich the Internet services enjoyed by American consumers.

Respectfully submitted,

COMMERCIAL INTERNET EXCHANGE ASSOCIATION

Robert D. Collet
Chairman of the Board
Commercial Internet eXchange Association

Barbara A. Dooley
Executive Director
Commercial Internet eXchange Association

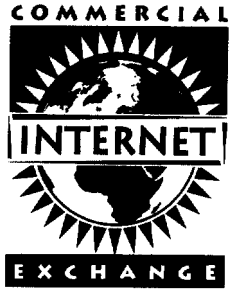


Ronald L. Plesser
Mark J. O'Connor
Stuart P. Ingis

Piper & Marbury L.L.P.
Seventh Floor
1200 Nineteenth Street, N.W.
Washington, D.C. 20036
202-861-3900

Its Attorneys

April 6, 1998



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Voyager Networks, Inc.
Web Professionals
WebSecure
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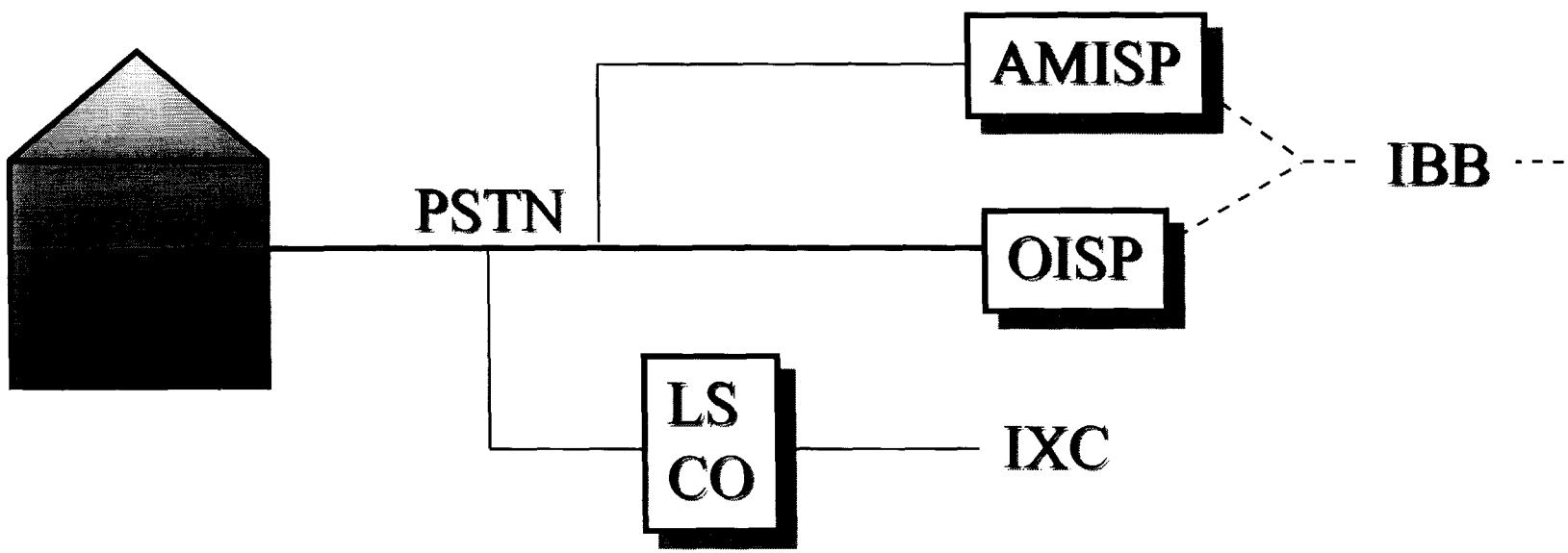
Figure 1
Predominate Current Residential Internet Architecture (PSTN)

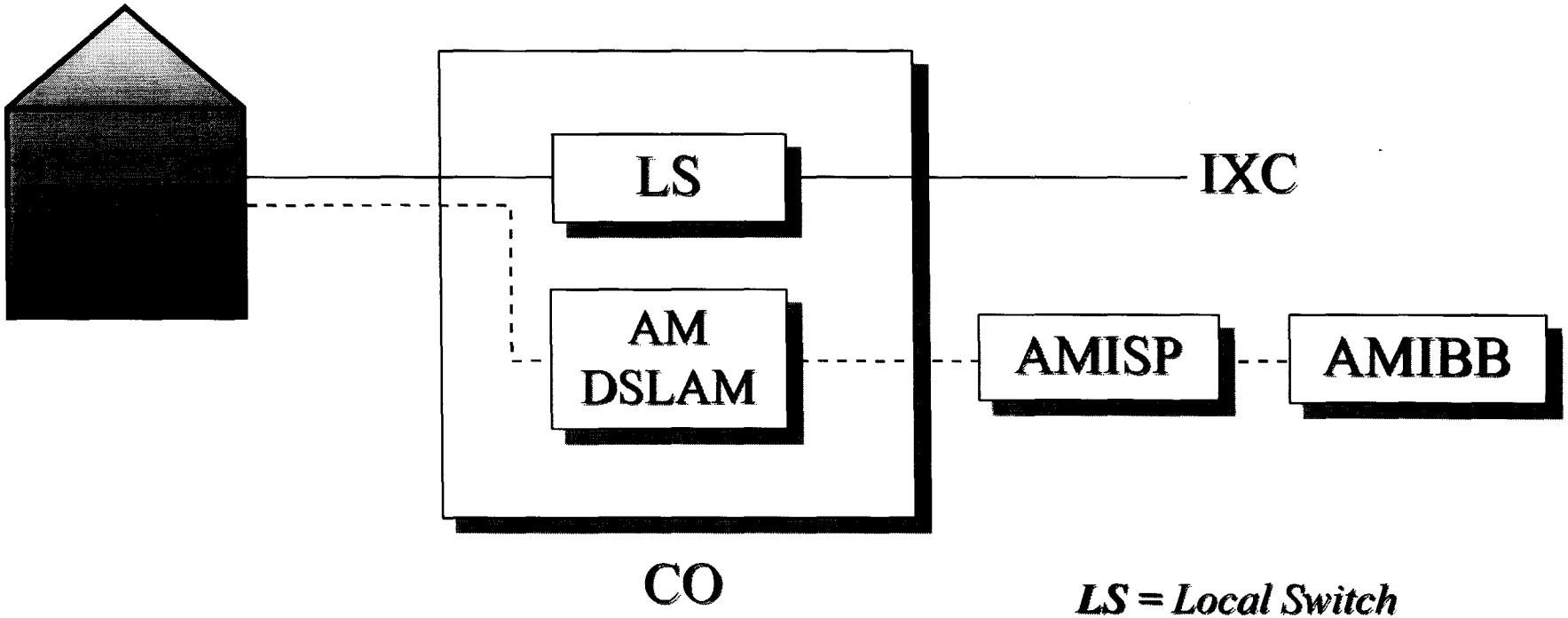


Circuit

Packet

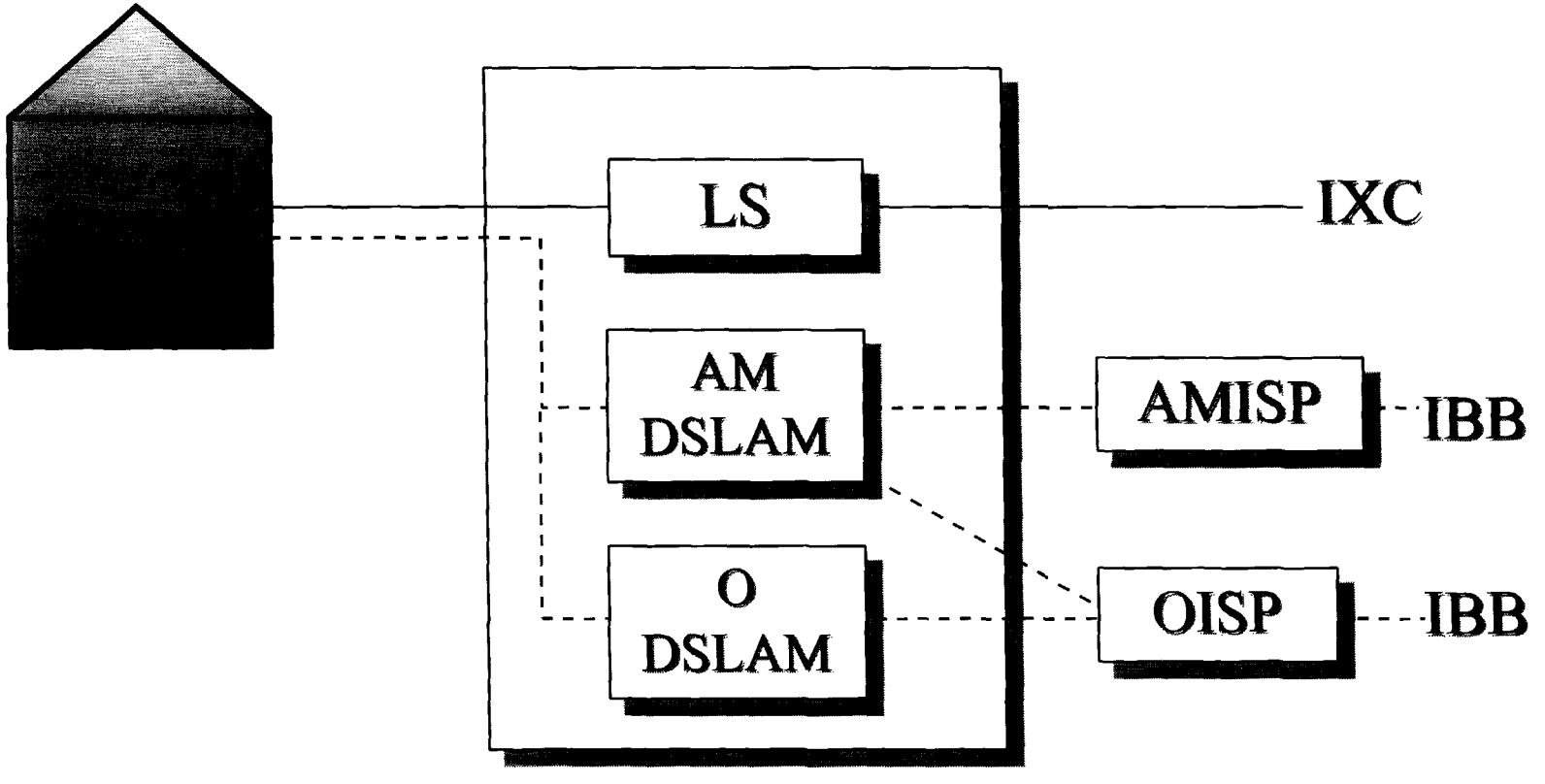
LS = *Local Switch*
CO = *Central Office*
IBB = *Internet Backbone*
O= *Other*
AM = *Ameritech*

Figure 2
Ameritech ADSL Model



***LS** = Local Switch*
***CO** = Central Office*
***IBB** = Internet Backbone*
***O**=Other*
***AM** = Ameritech*

Figure 3
CIX ADSL Model



LS = Local Switch
CO = Central Office
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O = Other
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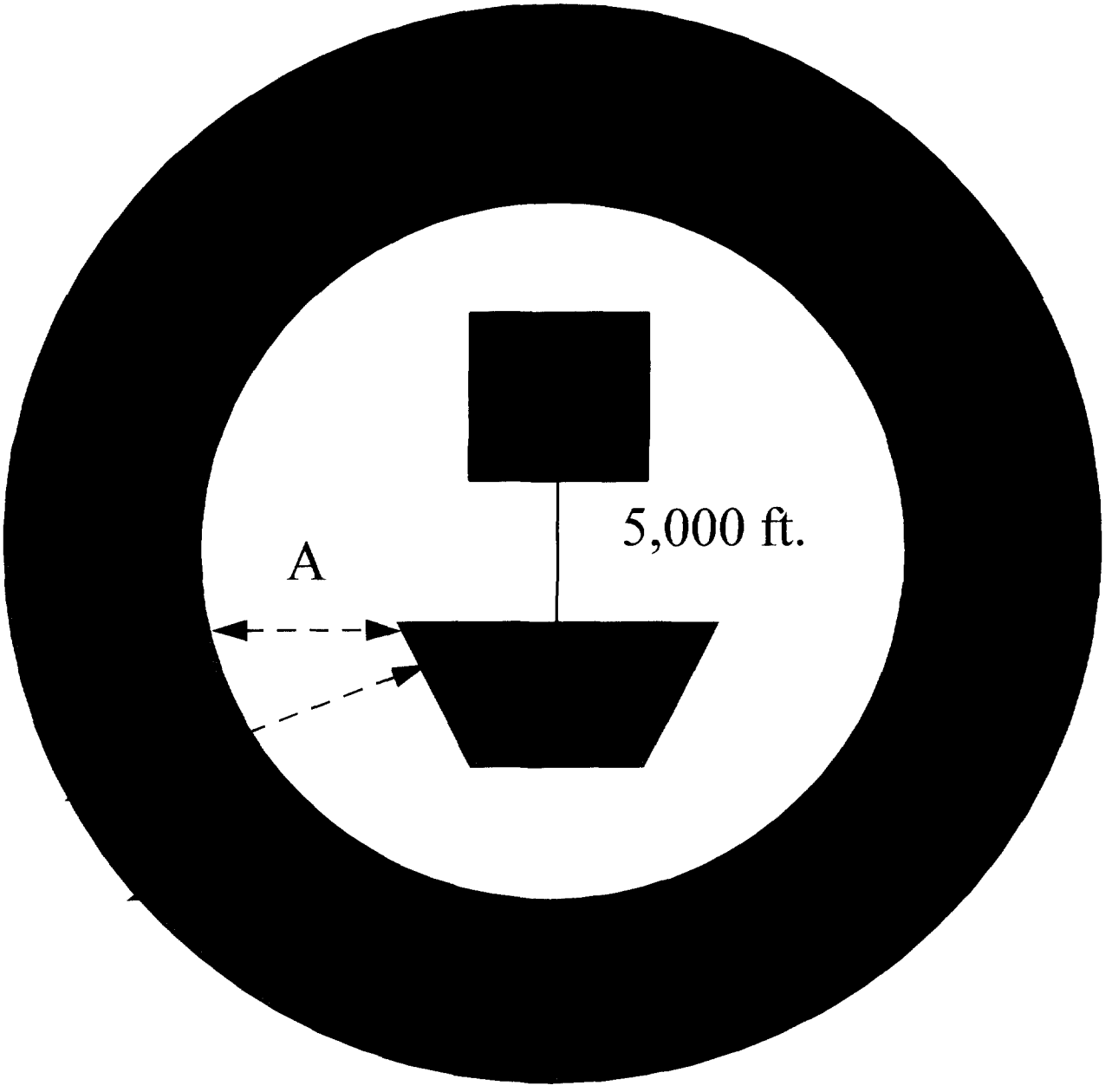
Figure 4
ADSL and the Collocation Issue



A = The radius that non-collocated independent ISPs may use ADSL to connect to customers (e.g. 13,000 ft.).

B = The radius that the collocated ILEC-affiliated ISP may use ADSL to connect to customers (e.g. 18,000 ft.).

C = The region of the market in which the ILEC-affiliated ISP would enjoy exclusive access to customers via ADSL.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was this 6th day of April, 1998 hand delivered or mailed, postage prepaid to the following:

Chairman William E. Kennard
Federal Communication Commission
1919 M Street, N.W.
Room 814
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, DC 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W.
Room 802
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Commissioner Michael Powell
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, DC 20554

Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, DC 20554

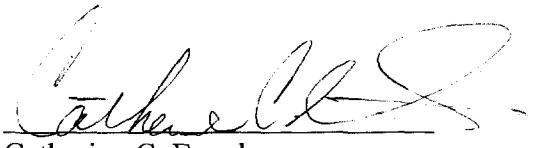
William T. Lake
John H. Harwood, II
Jonathan J. Frankel
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037

A. Richard Metzger
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, DC 20554

Carol Mattey
Chief, Policy and Program Plan Division
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, DC 20554

Jason Oxman
Policy and Program Plan Division
Federal Communication Commission
1919 M Street, N.W.
Room 544
Washington, DC 20554

John T. Lenahan
Christopher Heimann
Frank M.Panek
Gary Phillips
Ameritech Corporation
Room 4H84
200 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025



Catherine C. Ennels